

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. CR-10-38-R
)	
CHARLES ALAN DYER,)	
)	
Defendant.)	

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE REFERENCES TO THE GRENADE LAUNCHER BEING STOLEN
FROM THE MILITARY**

The United States hereby responds to "Defendant's Motion in Limine"(Doc. 24) which requests the Court exclude evidence and testimony related to the grenade launcher, which is charged in the Indictment, being stolen from the military. In support of the motion, defendant argues that these items are irrelevant to the issues and facts of the case, and would be prejudicial to the defendant, in violation of Fed. R. Evid. 401, 402, and 403.

STATEMENT OF FACTS

On February 2, 2010, a federal grand jury returned a one-count Indictment charging the defendant with possession of an unregistered destructive device, in violation of Title 26, United States Code, Section 5861(d). On January 12, 2010, sheriffs with the Stephens County Sheriffs Department executed a search warrant for DNA related to a pending felony case in Stephens County District Court, at the defendant's residence in Marlow, Oklahoma. During the execution of the search warrant, Lt. Lawson Guthrie, who

has prior military experience, observed the Colt M-203 grenade launcher charged in the Indictment in this case. Lt. Guthrie took a picture of the grenade launcher from the vantage point at which he observed it during the search. Lt. Guthrie and the other deputies left the residence without taking possession of the grenade launcher because it was not listed among the items they were allowed to seize pursuant to the warrant. Lt. Guthrie called Federal Bureau of Investigation (FBI) Special Agent Gene Pool and informed him of his discovery. SA Pool contacted Bureau of Alcohol, Tobacco, Firearms, and Explosive (ATF) Special Agent Brett Williams, and inquired into the legality of defendant's possession of this grenade launcher. SA Williams informed SA Pool that the defendant was not registered under the National Firearms Registration and Transfer Record (NFRTR) to possess this grenade launcher. Further, a query of the serial number of this grenade launcher through the NFRTR indicated that this grenade launcher was not registered to the defendant. Based on this information, SA Pool and Lt. Guthrie went back to the defendant's residence on January 13, 2010 and took possession of this device.

ARGUMENT

The government submits that evidence of this grenade launcher being stolen from the military is relevant to these proceedings. The government anticipates testimony will show that this grenade launcher is a 40 millimeter grenade launcher and was designed for the United States military. The United States military does not use any other caliber grenade launcher. Furthermore, the fact that this grenade launcher was stolen from the

military exemplifies that it was not sold, loaned, or surplusage of the United States military as this specific weapon was designated to be used in combat. If this weapon were sold, loaned, or surplusage of the United States military, it would not be considered a destructive device pursuant to Title 18, United States Code, Section 5845(f)(3). The defendant's concern lies in the fact that the jury may draw an inference that the defendant stole this grenade launcher, however the government can specifically address, through its witnesses, that the defendant is not alleged to have stolen the firearm. Furthermore, the defendant can request a special instruction be given by the Court instructing the jury that they are not to draw such an inference.

CONCLUSION

For the foregoing reasons, the government requests the Court deny the defendant's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2010, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: David Hammond.

s/Andre' B. Caldwell

Assistant U.S. Attorney

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